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1929

# Book Review. Cases on Domestic Relations by Joseph Warren Madden

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### Recommended Citation

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that if a certain interpretation is within the letter of the Constitution, the Supreme Court has held that it is not to be excluded because the framers did not intend it (*Dartmouth College v. Woodward*, 4 Wheaton [U. S.] 518, 644).

One reads with special interest Mr. Warren's interpretations of the intention of the framers. When treating the Convention's adoption of the principle that direct taxes and representatives should both be proportional to population he introduces a comment taking sides with the majority in the *Pollock* case, and he identifies this action of the Convention with the American colonial principle that "taxation and representation should go together" (p. 290). But the American colonial view was that taxes should not be laid except with the consent of the community expressed through its legislature, not that taxes when levied should be in proportion to population. The Supreme Court has held that the colonial doctrine of "no taxation without representation" is not to be found in the Constitution (*Heald v. D. C.*, 259 U. S. 114, 124). The action of the committee on style in placing the habeas corpus clause with the prohibitions upon Congress indicates, says Warren, an apparent recognition by the committee of the view that the power of suspending the writ should be exercised by Congress (p. 504). This interpretation based on context was urged by Taney in the *Merryman* case but was attacked in 1862 by Horace Binney, who showed that on August 20 Pinckney presented a proposition placing the suspending power with the legislature and that the Convention preferred the present wording suggested by Gouverneur Morris, who, by the way, was a member of the committee on style. The habeas corpus clause was debated while the judiciary was under consideration, and the final context of the clause was little more than an unimportant afterthought of the Committee.

Mr. Warren's book is careful, scholarly and informing. Its source value is very great indeed. The author is not to be criticized because the book does not contain all the Convention's deliberations; but the student should be aware that the full record as given in *Farrand's "Records"* must often be consulted for the determination of fine points. That the chronological treatment becomes at times unwieldy is no fault of the author, who handles his difficult method very well; but such subjects as the basis of representation, the supreme law clause and the executive article are given a more convenient topical discussion in the works of Farrand and McLaughlin.

University of Illinois.

J. G. RANDALL.

CASES ON DOMESTIC RELATIONS. By Joseph Warren Madden. St. Paul: West Publishing Co., 1928. Pp. xix, 742.

This recent addition to the American Casebook Series is intended to take the place of the excellent but now sadly obsolete collection of Cases on Persons, by Kales and Vernier. It is avowedly modeled upon its predecessor and in fact about one-half of the cases in the present book are taken from the Kales-Vernier col-

lection. The changes are not, however, entirely confined to recent cases; in a number of instances substitutions of older cases have been made by Mr. Madden. On the whole, these changes seem to include material of great merit and to constitute a definite improvement. The selection of more recent cases also appears to be very well done.

The arrangement of the previous book is likewise rather closely followed in the present collection. However, the outline is considerably simplified, Mr. Kales' rather ponderous table of contents being omitted. But the present work is fully as thorough and complete as its predecessor; in fact, one or two additional chapters are inserted dealing with subjects which in the Kales-Vernier collection were covered only by notes. Such are, for instance, the subjects of adoption and illegitimacy. The general divisions of this book, like those of its predecessor, are four in number, namely, Parent and Child, Infants, Husband and Wife, and Marriage, Divorce and Separation. The last topic is covered with a fair degree of fullness and the treatment is much more satisfactory than in the predecessor book, where this topic was treated only in a supplement. The reviewer is inclined to feel, however, that this is now much the most important division of the subject and that it should be given even more attention and proportionate space than in the book under review. However, the present book is in this vital respect a considerable improvement over its predecessor.

One other matter as to which the reviewer is inclined to disagree with the editor of this book is with respect to tenancy by the entirety, a subject which is covered in considerable detail. It seems to the reviewer that this might well be omitted, or at least considerably curtailed, in view of the fact that it seems to belong more properly to the courses on Real Property. These possible differences of opinion are, however, of small consequence if the book adequately covers the topics generally recognized to be indispensable.

With the qualifications already made with respect to the subject of marriage and divorce, the reviewer feels that it does so cover the subject. The subject of Domestic Relations is a very broad one, and most compilers of case books on this subject in recent years have had very little success in keeping their books within reasonable bounds. Mr. Madden's success in this particular is due very largely to his leaving out most of the historical matter on the law of husband and wife. This whole subject is covered in a single note of three or four pages, which points out that the subject is now of purely historical interest, the common law conception of the status of a married woman having come to a well-deserved end. Such a treatment may seem somewhat radical to many teachers who have experienced the undoubted pedagogical advantages of the study of cases showing the common law conception of this matter, with its gradual modification by equity and statutes. The reviewer is, however, inclined to agree that this ad-

vantage may well be sacrificed, in order to permit the spending of more time upon the subjects of greater present importance.

It has already been pointed out that the division of the present book on marriage, divorce and separation is a considerable improvement upon the Kales-Vernier book. The treatment of this subject in the Madden collection is fuller and yet not much longer than in the previous book. This has been accomplished in part by an admirable note on the early history of divorce. This is a matter which obviously cannot be satisfactorily considered through cases—for one thing, the subject is largely legislative—and this note will add very greatly to the understanding of the subject by the student—and possibly by the teacher, too—without burdening him or taking much time from the study of the very vital subject of present day divorce and separation.

In addition to these space- and time-saving expedients the entire collection is admirably supplemented and made more adequate than might be expected from its comparatively small bulk by numerous and excellent foot-notes. There is no attempt to make a complete collection of authorities, which would be impossible to accomplish within reasonable bulk and would likewise be useless to the ordinary student. But such cases as are referred to in these foot-notes are summarized briefly but adequately. This is infinitely superior to a mere list of citations which are generally (and quite excusably) ignored by the students. With foot-notes of the character at hand, the student will at least have some conception of the trend of the authorities whether or not he actually reads any of the cases cited.

On the whole, then, this book must be regarded as an excellent piece of work. The compiler has succeeded in covering a broad subject with countless ramifications in a manner which is both fairly complete and within reasonable space limits. The selection of cases is excellent, and the notes adequately fill in any gaps. Teachers who have had experience with the Kales-Vernier collection have found it to be well arranged and teachable. The present book has substantially all the merits of its predecessor and a number of improvements of its own, so that it too should stand well the test of the classroom. It ought to have a wide acceptance and use.

Indiana University School of Law.      ROBERT C. BROWN.

**RATIONALE OF PROXIMATE CAUSE.** By Leon Green. Kansas City: The Vernon Law Book Co., 1927. Pp. x, 216.

Mr. Green's book is already so well known and has been so widely and favorably reviewed as to make pointless here any general announcement of its merits. Nothing, the reviewer believes, has ever been written on this important yet obscure subject comparable to Mr. Green's treatise for its thoroughgoing statement and analysis of the problem. With this book all future study of the subject must commence.